

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

LEANNE L. McCONNELL, a single woman,

Respondent,

v.

JON M. RIEDEL and LISA RIEDEL,
husband and wife, d/b/a R & C
CONSTRUCTION, INC., a foreign
corporation, RIEDEL AND COMPANY
CONSTRUCTION, INC. and R & C
CONSTRUCTION, and SOUTH SOUND
BANK ASSIGNED SAVINGS ACCOUNT
NO. 0110002318,

Appellant.

No. 36583-9-II

UNPUBLISHED OPINION

Houghton, J. — Jon Riedel¹ appeals from a trial court order requiring him to deposit \$30,000 into the clerk’s registry and its later entry of judgment against him. He argues that the trial court should have followed writ of attachment proceedings before entering the order and that substantial evidence does not support the trial court’s findings and conclusions that transfers by note to his father and mother-in-law were subject to a constructive trust. We affirm.

¹ The appellants are Jon and Lisa Riedel, doing business as R&C Construction, Inc., Riedel and Company Construction, Inc., and R&C Construction. For simplicity, we refer to them as Riedel.

FACTS

This dispute arose from an April 2004 custom home construction contract between the builder, Riedel, and Leanne McConnell, his client. At some point, Riedel told McConnell he needed funds to install the power system and several other projects for her house. In May 2004, she lent him \$10,000 and received a promissory note in return. When he failed to repay the note, she sued him on his contractor's bond alleging breach of contract on the promissory note and other claims.

McConnell moved for partial summary judgment on Riedel's bond. During a hearing on the matter, the trial court learned that Riedel would soon receive \$200,000 from a sale to Puget Sound Construction, LLC. McConnell's counsel asked the trial court to protect \$30,000 of the proceeds to cover his client's potential recovery.²

The trial court noted, "I probably don't have authority to issue a writ of attachment, but we have to do something here. . . . The money is going to be paid out now. I want to protect the money." Verbatim Report of Proceedings (June 9, 2006) at 13-14. It then entered an order that provided,

(1) Plaintiff's Motion for Summary Judgment is Denied. (2) Defendants Jon M. Riedel and Lisa Riedel shall immediately take all steps necessary to pay or cause to be paid the sum of \$30,000.00 to the Clerk's Registry, to be held pending further order. Riedel shall direct [and] require Puget Construction LLC or its escrow company to comply with this order.

Clerk's Papers (CP) at 133.

² McConnell sought partial summary judgment on the \$10,000 promissory note, damages, and reasonable costs.

Riedel neither paid nor directed that \$30,000 be paid into the clerk's registry.³ Instead, he conveyed \$30,000 to his father and mother-in-law through an assignment of note and deed of trust.

Neither Riedel nor an attorney representing him appeared at the trial, and the trial court proceeded in his absence. The trial court heard evidence of McConnell's construction claims against Riedel and against his contractor's bond. At the conclusion of trial, the court found in part that Riedel's actions caused McConnell's property to decrease in value by \$10,000, that Riedel had not paid the \$10,000 promissory note, that McConnell had to pay \$10,450 for repairs and services, and that Riedel failed to pay \$30,000 into the clerk's registry as ordered. It also found,

An alleged Assignment of Note and Deed of Trust was executed by Jon Riedel and Lisa Riedel on January 4, 2006, which assigns their interest in said sale with Puget Sound Construction, LLC to Jon Riedel's father and mother-in-law. No evidence of payment for the assignment of Note was presented.

CP at 143 (FF 14).⁴

From the findings, the trial court in part concluded that Riedel breached the promissory note; violated the Consumer Protection Act, RCW 18.27.350; and caused other damages. It further concluded that

Defendant Riedel [was required to] pay \$30,000 to the Clerk's Registry from the proceeds of sale due from Puget Sound Construction, LLC. Defendant refused to comply with the Court's order, instead making a fraudulent conveyance of the

³ Riedel does not challenge the trial court's finding that he failed to pay into the registry. We treat unchallenged findings of fact and the conclusions as verities on appeal. *In re Marriage of Possinger*, 105 Wn. App. 326, 338, 19 P.3d 1109 (2001).

⁴ The record does not contain any more information than this. We do not know the specifics of the transaction between Riedel and his father and mother-in-law.

promissory note payable to his father and mother-in-law without fair consideration. Defendant Riedel made an unrecorded Assignment of Deed of Trust and Promissory Note to his father and mother-in-law, for no consideration and that assignment and transfer is not valid or enforceable.

CP at 146 (CL 17).

Plaintiff is entitled to \$30,000 proceeds to apply to her judgment from the fraudulent conveyance of the Puget Sound Construction, LLC note receivable, and a constructive trust shall be and hereby is imposed upon all proceeds from such fraudulent conveyance.

CP at 146-47 (CL 18).

Riedel moved for reconsideration. The trial court granted his motion and deleted the word “fraudulent” from its conclusions of law. Riedel appeals the trial court’s pretrial order to pay \$30,000 into the clerk’s registry and its decision rendered after trial in his absence.

ANALYSIS

Riedel first contends that the trial court issued what “was in effect a ‘Prejudgment Writ of attachment’” when it ordered an immediate \$30,000 payment into the clerk’s registry.

Appellant’s Br. at 5. He asserts that the trial court erred by failing to follow statutory procedure in issuing the writ without prior notice to him under RCW 6.25.070.

Riedel’s argument fails because he cannot appeal the order. RAP 2.2 (a)(1)(3) allows appeals from a decision that “prevents a final judgment or discontinues the action.” Such is not the case here. Moreover, as a practical matter, he never paid the sum into the registry. Thus, he has not been aggrieved and he cannot seek a remedy here. RAP 3.1.

Riedel next contends that the trial court erred in finding that the transfer to his father and mother-in-law lacked consideration. Without citation to authority, he argues that McConnell did

not plead such a claim and that although he did not attend trial, “he is entitled to rely on the complaint and amendments thereto that the trial would be limited to the issues or causes of action as plead [sic].” Appellant’s Br. at 7. Therefore, he asserts the trial court could not enter a finding of fact on lack of consideration for his assignment to his father and mother-in-law. We disagree for three reasons.

First, Riedel cannot claim surprise that McConnell testified about the family’s transactions because she specifically made interrogatory and request for production discovery requests.⁵ Second, we note that he cites no authority and, in fact, there is authority to the contrary. CR 15 allows amendment of the pleadings to conform to the evidence adduced at trial where tried by express or implied consent of the parties. He impliedly consented to such amendment of the pleadings when he did not attend the trial.

Third, with few exceptions, we do not address errors raised for the first time on appeal. *Eldredge v. Kamp Kachess Youth Servs., Inc.*, 90 Wn.2d 402, 408, 583 P.2d 626 (1978). Here, Riedel did not appear at trial, did not object, and therefore waived any right to claim trial court error. Nevertheless, our review of the record discloses that substantial evidence supports the trial court’s findings and that they, in turn, support its conclusions. *Landmark Dev., Inc. v. City of Roy*, 138 Wn.2d 561, 573, 980 P.2d 1234 (1999). Substantial evidence is evidence sufficient to convince an unprejudiced, rational person that a finding is true. *Isla Verde Int’l Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 751-52, 49 P.3d 867 (2002).

⁵ Riedel argues that the trial court lacked subject matter jurisdiction, apparently based on lack of specific pleadings regarding the family transaction relating to the Puget Sound Construction receivable. As noted, we disagree that this is the basis for any claim on appeal.

McConnell testified that Riedel signed over the promissory note to his father and mother-in-law to satisfy a debt. This testimony, plus the unchallenged findings of fact and conclusions of law regarding his unfair, deceptive, and bad faith dealings, support the trial court's conclusions of law with regard to the family transactions. Riedel's argument fails.

ATTORNEY FEES

McConnell seeks attorney fees under terms of the \$10,000 promissory note. A party may recover attorney fees where authorized by private agreement, statute, or recognized ground of equity. *Mellor v. Chamberlin*, 100 Wn.2d 643, 649, 673 P.2d 610 (1983).

The promissory note provides that "[i]n the event legal action is brought to recover on . . . this Note, the prevailing party . . . shall be entitled to such legal fees and costs of suit as determined by a court . . . to have been reasonably incurred in such action." CP at 71. The note authorizes our award of attorney fees on appeal. We award McConnell attorney fees and costs on appeal.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Houghton, J.

We concur:

Hunt, J.

No. 36583-9-II

Van Deren, C.J.